

EXHIBIT K

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,
Plaintiff,

V.

STOCKX LLC,
Defendant.

Civil Action No.:
1:22-cv-00983-VEC

ORAL AND VIDEOTAPED DEPOSITION OF
STEVEN McNEW
AUGUST 8, 2023

ORAL AND VIDEOTAPED DEPOSITION of
STEVEN McNEW, produced as a witness at the
instance of the Defendants, and duly sworn,
was taken in the above-styled and numbered
cause on August 8, 2023, from 9:10 a.m. to
5:40 p.m., before Mendy A. Schneider, CSR,
RPR, in and for the State of Texas, recorded
by machine shorthand, at the offices of
DLA PIPER, 845 Texas Avenue, Suite 3800,
Houston, Texas, pursuant to the Federal Rules
of Civil Procedure and the provisions stated
on the record or attached hereto; that the
deposition shall be read and signed.

A P P E A R A N C E S

FOR THE PLAINTIFF:

MICHAEL FLUHR (Real-time)
DLA PIPER
555 Mission Street, Suite 2400
San Francisco, California 94105-2933
415.615.6011
michael.fluhr@dlapiper.com

FOR THE DEFENDANT:

CHRISTOPHER FORD (Real-time)
KATHRYN SABA
DEBEVOISE & PLIMPTON
650 California Street
San Francisco, California 94108
415.738.5705
csford@debevoise.com
ksaba@debevoise.com

ALSO PRESENT:

CYNTHIA JOSEPH, The Videographer

1 Q. So would you have to decompile
2 the smart contract code in order to access
3 this link?

4 MR. FLUHR: Objection.

5 A. In the version I received I 09:48:42
6 believe you had to.

7 Q. (BY MR. FORD) What do you mean
8 by in the version you received?

9 A. I don't know what consumers
10 might have been given access to. I -- I was 09:48:51
11 given access to a version that required a
12 decompilation before being able to review it
13 in human form.

14 Q. So you didn't do any work to
15 determine what consumers might have had 09:49:05
16 access to aside from what you had access to;
17 is that right?

18 MR. FLUHR: Objection.

19 A. I -- I didn't interview any
20 custodians or customers to find out what they 09:49:14
21 had access to, no.

22 Q. (BY MR. FORD) Are you aware of
23 any actual or potential Vault NFT purchasers
24 who accessed this JSON file?

25 A. I wouldn't know one way or the 09:49:26

1 other.

2 Q. And just so I understand, did
3 you personally, in the course of preparing
4 your opinions, access this JSON file via the
5 blockchain or anything other than this Nike 09:49:40
6 production document?

7 MR. FLUHR: Objection.

8 A. I did not personally follow
9 that JSON file link, no.

10 Q. (BY MR. FORD) So just to 09:49:48
11 clarify the question, I'm not asking about
12 following the link that's set out in capture
13 URL here.

14 I'm asking: Did you do
15 anything to find where in the smart contract 09:49:58
16 this link appears?

17 MR. FLUHR: Objection.

18 A. So our work certainly would
19 have been to examine the code, examine
20 Etherscan, identify what's in the metadata, 09:50:11
21 and review what was in the metadata.

22 I didn't personally follow the
23 link, but the link address purports with the
24 representation of the link in the exhibit
25 with the description that's contained here. 09:50:28

1 there are definitions that we could split
2 hairs about in terms of is
3 fungible/nonfungible a blockchain term or
4 isn't it, is an NFT a blockchain term or
5 isn't it.

10:35:42

6 I would suggest that across all
7 the clients I work with, NFTs are generally
8 thought to be blockchain-based assets.

9 Q. Are the clients you work with
10 generally corporations?

10:35:53

11 A. It's a mix. It's corporations.
12 So Fortune 500 and -- and others. It is
13 marketplaces, creators, innovators. It spans
14 the gamut.

15 Q. What work did you do in
16 connection with your report or otherwise, if
17 any, to understand how the term NFT is
18 understood by consumers?

10:36:08

19 A. So I'm not sure I understand
20 the question. Could you --

10:36:25

21 Q. What part of the question do
22 you not understand?

23 A. -- rephrase for me?

24 Well, so you're saying what
25 work did I do, and I suppose there is a

10:36:31

1 colloquial understanding that in the context
2 of Vault NFTs and in the context of NFT
3 projects that we're fairly specifically
4 talking about blockchain-based digital
5 assets.

10:36:52

6 So I didn't interview others or
7 ask them their understanding of whether or
8 not an NFT is a digital-based asset.
9 Everything that I read in this case is really
10 pointing to it is a blockchain-based NFT.

10:37:07

11 I hope that answered the
12 question.

13 Q. It's interesting, but it
14 doesn't quite answer the question, so let me
15 try to ask it a different way.

10:37:20

16 Did you do any work in this
17 case specifically to understand how the term
18 NFT is understood by consumers?

19 MR. FLUHR: Objection.

20 A. I think NFTs in this case are
21 understood to be what I see in other cases,
22 other examples of projects, where there is an
23 understanding that this is an NFT project.
24 Representations were made about the NFT being
25 tied one-to-one to the blockchain.

10:37:32

10:37:53

1 I think consumers believed
2 that, thought that, and bought a bundle of
3 rights and access when acquiring a digital
4 asset, an NFT in this case.

5 So I'm, sorry, Counselor, I'm 10:38:06
6 struggling to make sure I hit the answer, but
7 just it's -- does that help?

8 Q. (BY MR. FORD) So you said that
9 you think that consumers believed something,
10 right? That was your testimony. 10:38:21

11 What work did you do to arrive
12 at that conclusion or opinion that consumers
13 believed the things that you think they
14 believed?

15 MR. FLUHR: Objection. 10:38:31

16 A. All of those things detailed in
17 my report: the review of all of the evidence
18 in the case, the external materials, the
19 social media posts and sites, the discord
20 server content, the internal communications; 10:38:43
21 all of those collectively tell a story about
22 what was represented, and also what,
23 therefore, consumers believed to be the asset
24 they were purchasing.

25 Q. (BY MR. FORD) Did you ask any 10:38:57

1 consumers about any of those pieces of
2 information that you are referencing?

3 A. I did not interview any
4 consumers. I looked at post comments,
5 internal and external, that were made about 10:39:11
6 the NFTs and what those expectations were
7 voiced as.

8 Q. Aside from interviews, did you
9 do any surveys of any kind of consumers?

10 A. I did not. 10:39:23

11 Q. Have you ever spoken to anyone
12 in any context who you understand to have
13 been a purchaser of a Vault NFT?

14 MR. FLUHR: Objection.

15 A. Not that I'm aware of. 10:39:37

16 Q. (BY MR. FORD) Have you ever
17 spoken to anyone in any context who you
18 understand to have been a prospective
19 purchaser of a Vault NFT?

20 MR. FLUHR: Objection. 10:39:46

21 A. Really tough to answer that
22 speculatively. Not -- not that I know of.

23 Q. (BY MR. FORD) You've never had
24 a conversation with anyone about -- never
25 mind. Let me withdraw that. 10:39:58

1 Have you ever conducted
2 consumer perception research more generally
3 outside of the context of this case?

4 A. I have not and didn't do it
5 here either as a formality, right. It was 10:40:09
6 more understanding what was represented to a
7 consumer, what the consumer voiced their
8 understanding of that to be, and then the
9 behaviors and whether or not those behaviors
10 aligned with those beliefs. 10:40:23

11 Q. And when you say what the
12 consumer voiced their understanding of that
13 to be, are those the consumer statements that
14 are cited specifically in your opening and
15 rebuttal reports? 10:40:36

16 A. Right, among others I may have
17 read during the course of the investigation,
18 yes.

19 Q. Are there any statements by
20 consumers that you relied upon in forming 10:40:43
21 your opinions that are not set out in your
22 opening or rebuttal reports?

23 MR. FLUHR: Objection.

24 A. I did my best to make sure that
25 anything impactful was included. 10:40:56

1 Aren't terms I'm particularly familiar with.
2 It's really helping a company determine their
3 value for purposes of acquisition or
4 fundraising who might be an NFT platform
5 provider or interact significantly with NFTs 11:12:46
6 as sort of one-use case.

7 The second, not evaluate -- not
8 placing a value on the company but rather
9 a -- a set of NFT assets as a collection in
10 formatting -- formulating a value to that or 11:13:01
11 on a specific individual NFT and placing a --
12 a value on that.

13 Q. (BY MR. FORD) And am I --
14 well, let me just ask: Is the process of
15 valuing a specific individual NFT different 11:13:14
16 than the process that you would do to value a
17 collection of NFTs?

18 A. There are differences, yes. So
19 the way I think of it is at an NFT level,
20 there's less to evaluate; at a project, 11:13:27
21 slightly more; at a company, even more.

22 Q. What steps do you take when
23 you're asked to value a specific individual
24 NFT to arrive at a result?

25 A. So a ton of data collection. 11:13:41

1 As you might imagine, a lot of that is
2 related to its trading history, trading
3 patterns, identifying comparables,
4 understanding the project, what is the
5 utility of the project, what do consumers 11:13:55
6 find attractive about that or collectible
7 about that, how unique is that individual
8 token, what are the characteristics of it
9 that make it unique, does it compare in any
10 way to other any other token. 11:14:06

11 So there's a whole multitude of
12 variables that come into that sort of
13 valuation that ultimately drive an opinion
14 about what we think or I think that
15 particular value is. 11:14:18

16 Q. Going back to the two different
17 categories of tickets that your project
18 mints, you noted that in some cases, there is
19 imagery that is designed to be associated
20 with the NFT; is that right? 11:14:33

21 A. So I would say they're images
22 associated with either. There's a difference
23 between those two. So for some of our
24 clients, they see -- they -- they have a need
25 to offer tickets as a form of entry that give 11:14:47

1 number of different things that NFTs can
2 represent ownership of and you distinguish
3 between physical assets such as real estate
4 and fine art and more digitally native
5 products.

11:32:38

6 Is that fair?

7 A. Correct.

8 Q. Okay. So are there companies
9 that you have advised in the course of your
10 work that are using NFTs to represent
11 ownership of physical assets as you describe
12 in your report?

11:32:46

13 A. Digital assets, certainly. I'd
14 have to really double-check on the physical
15 asset side specifically.

11:33:05

16 Q. Sitting here today, can you
17 recall any?

18 A. None immediately come to mind.
19 Sorry, the hesitation is just, there are a
20 lot of clients over a long period of time,
21 and I'm trying to recall specifically, but I
22 can't think of any off the top of my head.

11:33:17

23 Q. Okay. So here I notice that in
24 the discussion of digitally native products
25 you included a couple of examples, profile

11:33:46

1 about this language?

2 A. I reviewed a lot of material.
3 I don't remember specifically that language.

4 Q. Was it -- would it be relevant
5 to understanding the meaning that StockX put 12:01:35
6 on particular terms in StockX's presentations
7 to understand what employees testified that
8 that language meant?

9 MR. FLUHR: Objection.

10 A. Yes, but I think, again, the 12:01:50
11 end result and the conversation itself tells
12 the narrative that, as an independent
13 observer, StockX was focused on the design
14 element of these NFTs.

15 They talked about it 12:02:08
16 internally, and that's what ultimately ended
17 up as the image in the product pages.

18 Q. (BY MR. FORD) And no consumer,
19 to your knowledge, ever saw this
20 presentation, correct? 12:02:18

21 A. I don't know.

22 Q. Do you have any reason to
23 believe any consumer or actual or prospective
24 purchaser of the Vault NFTs ever saw this
25 slide deck or presentation? 12:02:26

1 MR. FLUHR: Objection.

2 A. I have no idea.

3 Q. (BY MR. FORD) The other
4 example that you gave was a chat -- an
5 internal chat on Page 46 of your report. 12:02:43

6 A. Yes.

7 Q. And this was an -- an internal
8 Slack thread among StockX employees, correct?

9 A. Correct.

10 Q. And is -- was it -- I believe 12:03:03
11 it was your testimony that you relied on this
12 in forming your opinion that StockX -- well,
13 let me -- let me actually find the testimony
14 because that would be best.

15 Right. So let me strike that 12:03:49
16 and restart the question.

17 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23 MR. FLUHR: Objection.

24 A. It is another example, yes.

25 Q. (BY MR. FORD) Okay. And where 12:04:22

1 and things like that early on.

2 Q. But not -- you decided not to
3 include any of those in your report?

4 MR. FLUHR: Objection.

5 A. I don't recall any of them 12:05:45
6 being in the report as examples.

7 Q. (BY MR. FORD) And why not?

8 A. So my opinion is that great
9 care and time and attention was spent
10 designing and architecting an NFT image that 12:05:57
11 conveyed to a consumer something more than a
12 claims ticket or some basic utility, but that
13 there was thought put into the careful design
14 of an image that then spoke to a consumer in
15 a way that led them to believe it was 12:06:18
16 something more desirable, more collectible.

17 Q. And I think we've already
18 discussed, though, that you did not do
19 anything to speak to or survey consumers to
20 understand whether anyone actually did 12:06:31
21 believe that it was something more desirable
22 or more collectible, correct?

23 A. I did not interview anybody,
24 but, look, this is consistent across nearly
25 every project I've worked on, where the 12:06:42

1 that was going to be burned in a short period
2 of time and, therefore, no longer available.

3 So that was the basis of --
4 that was the whole opinion, right, related to
5 the imagery, and that care was taken to 12:16:24
6 develop that and that accordingly it was
7 unclear because of that changing terminology
8 or that changing description what rights were
9 actually conveyed to the consumer.

10 Q. So I'm a little confused, 12:16:40
11 because I asked you what you put a lot of
12 weight into and you returned to the concept
13 that there was changing terminology and a
14 changing description, which I think you had
15 just told me was what you didn't put a lot of 12:17:07
16 weight into.

17 MR. FLUHR: Objection.

18 MR. FORD: Sorry, I hadn't
19 finished the -- the question.

20 Q. (BY MR. FORD) So I'm just 12:17:17
21 trying to understand specifically what
22 evidence you reviewed in connection with your
23 work in this case that informed your opinion
24 that consumers believed that the Vault NFT
25 images were worthy of sharing. 12:17:34

1 MR. FLUHR: Objection.

2 A. So -- so I think we keep coming
3 back to this concept that there's some sort
4 of formulaic approach here that has measured
5 weights and balances, and I -- I don't think 12:17:47
6 it might work that way at all.

7 I think it might work as
8 understanding the totality of what happened,
9 and as part of that, understanding the images
10 that were used, how they were designed, how 12:17:59
11 they were conveyed and ultimately shared with
12 consumers mattered.

13 And then related to the rights
14 and benefits, noting that in the context of
15 highly stylized images and collectible 12:18:16
16 images, there is often a package or a bundle
17 of rights and benefits. And along with that
18 includes rights whether legal, legally
19 enforceable or not, to use those images in
20 some capacity or some way. 12:18:32

21 And so my report gives two
22 examples of two projects that conveyed what
23 that is to their consumer. So that was the
24 basis for it.

25 Q. (BY MR. FORD) So we're 12:18:46

Age Group	Percentage
18-24	100
25-34	90
35-44	80
45-54	70
55-64	60
65-74	50
75-84	40
85-94	30
95-104	20

[illegible]

1

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

■

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

1 A. Correct.

2 Q. You also offer a number of
3 opinions about whether or not consumers would
4 have had a clear understanding of what the
5 Vault NFTs were; is that right?

13:49:59

6 MR. FLUHR: Objection.

7 A. I think that's fair.

8 Q. (BY MR. FORD) But as I think
9 we've discussed a number of times, consumers
10 would not have seen StockX's internal
11 documents when reaching their understandings
12 or thoughts about Vault NFTs, right?

13:50:09

13 A. I can't know what the consumer
14 would see. But tests were done. So I -- I
15 don't know that I can honestly answer that
16 question.

13:50:22

17 Q. Well, let me ask it a different
18 way.

19 Of the internal StockX
20 documents that you considered, are you aware
21 of any of those that were seen by actual or
22 prospective purchasers of Vault NFTs?

13:50:28

23 A. I honestly can't know what they
24 might have done, shared, tested the market,
25 shared what the market -- I -- I don't know.

13:50:44

1 Q. But as to the internal StockX
2 documents that you considered, was it your
3 understanding as you were considering them
4 that any actual or prospective purchaser of a
5 Vault NFT had seen that document? 13:50:55

6 A. I think my view and opinion is
7 that it's possible they could have seen it.
8 I can't know whether they did or didn't, so
9 that didn't heavily factor to anything I -- I
10 did. 13:51:11

11 Q. Did you, in reaching your
12 opinions, assume that any of the internal
13 StockX documents that you saw had, in fact,
14 been seen by consumers?

15 A. I -- I wouldn't have made an 13:51:21
16 assumption either way.

17 Q. So what did you do in reaching
18 your conclusions about what consumers
19 understood about the Vault NFTs to ensure
20 that as you were reaching those opinions you 13:51:36
21 were considering only the information that
22 consumers would have seen and not internal
23 StockX materials that consumers would not
24 have seen?

25 MR. FLUHR: Objection. 13:51:48

1 A. So that was a really long
2 question. Let me see if I can get this
3 right.

4 Q. (BY MR. FORD) I can repeat it
5 if that would be easier. 13:51:56

6 A. Please.

7 Q. Okay. What did you do in
8 reaching your conclusions about what
9 consumers understood about the Vault NFTs to
10 ensure that as you were reaching those 13:52:05
11 opinions you were considering only the
12 information that consumers would have seen
13 and not internal StockX information that
14 consumers would not have seen?

15 MR. FLUHR: Objection. 13:52:18

16 A. Understood. So to me there are
17 multiple angles of this, right?

18 There's the internal what did
19 StockX do, what were their actions, what did
20 they ultimately produce and deliver. 13:52:33

21 And then to your point, there
22 is what did the consumer likely see and
23 understand about this.

24 And within that category, there
25 are definitive items, how it was represented 13:52:44

1 on a website, the influencers that were --
2 were hired in talking about the platform or
3 the project, the experience the consumer
4 themselves would have had, right, logging
5 into the site looking at the PDP page -- or 13:53:00
6 the PDP, looking at the products and
7 experiencing the sale, the waiting room, the
8 road map, all of those kinds of things that a
9 consumer would experience and the sort of
10 connecting all of those dots with what 13:53:13
11 actually was delivered in the end.

12 So I don't know if I'm quite
13 answering your question, but essentially it's
14 isolating what that consumer should have
15 normally seen and therefore understood to be 13:53:23
16 the product that was being offered.

17 Q. (BY MR. FORD) As you were
18 doing that, isolating what the consumer
19 should have normally seen, had -- when --
20 sorry, let me strike that and rephrase the 13:53:38
21 question.

22 At the time when you were
23 evaluating these public materials about what
24 a consumer would have normally seen and
25 understood, had you already reviewed internal 13:53:50

1 StockX documents and materials?

2 MR. FLUHR: Objection. Sorry.

3 Objection. Go ahead.

4 A. I wouldn't -- I don't know that
5 I would really know what the sequence was. I 13:54:02
6 suspected -- I suspect it was mostly in
7 parallel.

8 It was sort of not categorized
9 as internal versus customer. It was sort of
10 here's all of the evidence and let's wade 13:54:13
11 through it and look at them in context and
12 form opinions based on what we see.

13 Q. (BY MR. FORD) Okay. Let's
14 talk a bit about this design process that
15 you, I think, were just referring to. And we 13:54:30
16 can go to Page 54 of your report.

17 And sorry, just for the record,
18 Exhibit 1, 50 -- Page 54.

19 Are you with me?

20 A. Page 54, yes, sir. 13:54:54

21 Q. Okay. You write under the blue
22 heading: "For the Vault NFT planning,
23 design, development, and architecture, StockX
24 utilized the Minimum Viable Product ('MVP')
25 methodology." 13:55:12

1 was to evaluate the StockX NFT offering,
2 their actions, product quality, and customer
3 reaction to that. So I didn't evaluate
4 deeply any other NFT platforms or projects.

5 Q. (BY MR. FORD) You did offer 14:07:06
6 comparisons, though, to the Bored Ape Yacht
7 Club and Azuki, right?

8 A. For certain aspects, yes, and
9 also more largely to my experience broadly in
10 the space with customers ranging from 14:07:20
11 Fortune 500 to influencers and platforms,
12 yes.

13 Q. Why would it not have been
14 relevant for you to understand what your
15 client, Nike, who retained you here, had as 14:07:31
16 an experience when launching their own NFT
17 platform?

18 MR. FLUHR: Objection.

19 A. Well, so I -- I would probably
20 first qualify that, I don't see Nike as a 14:07:41
21 client. I see my role here to look at -- I
22 know that sounds Pollyanna but it's true.

23 My job is to look at the real
24 facts of this and to form opinions about what
25 I think happened here. What Nike may or may 14:07:54

1 Q. (BY MR. FORD) And when you
2 were forming that opinion, did you consider
3 other companies' models around NFT custody
4 and trading?

5 A. So I would say generally 14:49:30
6 considered the behaviors and the patterns and
7 the offerings of a StockX to other NFT
8 companies, platforms, and projects.

9 Q. Which other companies,
10 platforms, and projects? 14:49:46

11 A. Many of my clients that we've
12 talked about across the industry, whether
13 they be Fortune 500, other similar companies
14 to StockX, innovators/creators that have
15 hired us to do analysis or consulting or some 14:50:02
16 sort of work.

17 So it's sort of in comparison
18 to the rest of that understanding across the
19 NFT population.

20 Q. I -- I -- I think we've already 14:50:11
21 addressed this, but this is where I'm
22 struggling.

23 Are you able to identify for me
24 any of those clients that you used as --
25 whose platforms you used as comparators to 14:50:21

1 could have, and weighed it in determining,
2 you know, what my ultimate opinion is.

3 Q. So looking at your Materials
4 Considered, which is Exhibit A to your first
5 report, I noticed a number of StockX web 14:59:08
6 pages, and if we look on page -- well, it's
7 actually Page 3 but it's numbered as Page 2
8 of your Materials Considered, you reviewed
9 one page about midway down,
10 "StockX.com/help/articles, what are the 14:59:40
11 rewards and benefits of owning NFTs on
12 StockX."

13 Do you see that?

14 A. I'm sorry, I don't. Oh, I see
15 it, yes. 14:59:49

16 Q. Okay. So -- so you did review
17 an article specific to rewards and benefits
18 when you were forming your opinion; is that
19 right?

20 A. Sure. 15:00:01

21 Q. Were you aware that StockX
22 issued a more general Help and FAQ page on
23 the Vault NFTs?

24 A. I'm generally aware that those
25 have changed over the course of time, but I 15:00:13

1 don't know specifically that I have every
2 version and every date of every version.

3 Q. Were you aware that StockX
4 issued an FAQ specifically explaining Vault
5 NFT additions?

15:00:28

6 MR. FLUHR: Objection.

7 A. I think I saw that.

8 Q. (BY MR. FORD) But did not list
9 that in your Materials Considered?

10 A. Yeah, I'm just trying to
11 remember. I saw so many FAQs, but I don't
12 know if -- yeah, I don't recall specifically
13 which one you're referring to and if it was
14 one I looked at or not.

15:00:37

15 Q. Uh-huh.

15:00:47

16 I'll -- I'll represent to you
17 that it is not cited either anywhere in your
18 report or in your Materials Considered.

19 There was also an FAQ that
20 StockX issued explaining the difference
21 between Vault NFTs and Experiential NFTs.

15:00:55

22 Do you recall seeing that?

23 MR. FLUHR: Objection.

24 A. I -- I wouldn't know without
25 seeing it, if it's something that looks

15:01:05

1 familiar or not.

2 Q. (BY MR. FORD) Okay. I'll
3 represent to you that that also wasn't cited
4 either anywhere in your report or in your
5 Materials Considered.

15:01:13

6 Do you believe that you may
7 have seen those documents and simply did not
8 include them in your report?

9 MR. FLUHR: Object.

10 A. Yeah, I -- I don't know. I 15:01:20
11 would have to see them to see if they look
12 familiar and if I saw them in any way.

13 Q. (BY MR. FORD) Okay. Let's put
14 this aside for the moment.

15 Are you familiar with the NBA? 15:01:31

16 A. Yes.

17 Q. National Basketball
18 Association?

19 A. Yes, sir.

20 Q. Are you familiar with the NBA's 15:01:37
21 Top Shot NFT project?

22 A. Generally familiar.

23 Q. Did you consider in any way the
24 NBA's Top Shot NFT when forming your opinions
25 in this case? 15:01:50

1

█

█

█

█

█

█

█

█

█

█

█

█

█

█

█

16

(Marked McNew Exhibit No. 16.)

17

Q. (BY MR. FORD) I'm going to

18

hand you what I've marked as Exhibit 16,

19

which is a document bearing the Bates

20

No. STX0094175, and I'll ask if you recognize 15:06:22

21

this document.

22

Take the time that you need to

23

flip through it.

24

A. Would you like me to review or

25

browse and be prepared to comment, or fully 15:06:50

1 read?

2 Q. So I -- I'd first like to know
3 if you recall reviewing this document in the
4 course of forming your opinions in this case?

5 A. It does not immediately look 15:06:59
6 familiar.

7 Q. Okay. We can -- we can just
8 step through certain representations. Let's
9 look at the second page of the document which
10 has a Bates number ending in 176. 15:07:11

11 A. Yes, sir.

12 Q. There's a question, "Where can
13 I check the blockchain ledger? Why don't I
14 see my transaction in the ledger?"

15 Do you see that? 15:07:21

16 A. I see that.

17 Q. And then the answer provided
18 below it reads: "You can check the
19 blockchain ledger for each StockX NFT through
20 Etherscan. Since StockX maintains custodial 15:07:29
21 authority of all NFTs traded on the platform,
22 you will not see the transaction history in
23 the blockchain ledger.

24 "You can, however, always see
25 the transaction history on the StockX product 15:07:40

1 page. Transaction history is blended for all
2 editions and will not show trades on an
3 individual token basis.

4 "In the future, customers will
5 have the ability to withdraw an NFT from 15:07:51
6 StockX to an external personal wallet and any
7 withdrawal will be posted below."

8 Do you see that?

9 A. I do see that and, I'm sorry,
10 is there a date that this would have been 15:08:01
11 live or active?

12 Q. So if you look towards the --
13 let's see.

14 If you look towards the back --
15 this is going to take a minute, but we can go 15:08:37
16 through that. So on page that ends in 194,
17 you see there's a date of January 18th, 2022,
18 at the top of that page?

19 A. Got it.

20 Is there no date specific to 15:08:58
21 these first pages?

22 Q. So I'm -- I'm getting there for
23 you just if you --

24 A. Okay. Sorry.

25 Q. No, it's okay. 15:09:04

1 So -- and then there is a
2 launch schedule -- are you familiar with sort
3 of a product launch schedule?

4 A. Yes, sir.

5 Q. Okay. So do you see here what 15:09:10
6 looks like a -- a product or marketing launch
7 schedule?

8 A. What page would that be?

9 Q. So starting on 194, you see,
10 "Twitter 1:00 p.m. EST," a series of Tweets. 15:09:20
11 Page 195, "Instagram feed
12 1:00 p.m. EST," and some text.

13 Over the next couple pages,
14 IGS. On Page 198, "Discord 1:00 p.m. ET,"
15 and some text. 15:09:38

16 Do you see all of that?

17 A. I see all of that.

18 Q. Okay. And then as it
19 continues, you see still under that heading
20 "Discord 1:00 p.m. ET," all of that text 15:09:51
21 continues to "Introducing the vault"; "How it
22 works"; "Frequently asked questions." That's
23 on Page 199.

24 A. And, I'm sorry, was there a
25 question about a development schedule or -- 15:10:11

1 Q. No. I mean, I -- I'm trying to
2 give -- I'm trying to respond to your
3 question, and I'm just --

4 A. I understand.

5 Q. Right. So at -- and then it 15:10:20
6 continues onto Page 200. And it says: "If
7 you need help with our vault token, our team
8 is here to support hyperlinks StockX.com/help
9 after those initial FAQs."

10 A. Okay. I've browsed this. 15:11:02

11 Q. Okay. In any of the materials
12 you reviewed and considered in connection
13 with this case, did you review anything that
14 contained the representations that you saw on
15 Page 176 that I read to you? 15:11:16

16 MR. FLUHR: Objection.

17 Q. (BY MR. FORD) Sorry, the page
18 ending in 176.

19 MR. FLUHR: Objection.

20 A. I'm sorry, do you mean the 15:11:24
21 Bates number?

22 Q. (BY MR. FORD) I mean the --
23 yes, the Bates number ending in 176 --

24 A. Thank you.

25 Q. -- the portion I read to you, 15:11:35

1 the question and answer beginning, "Where can
2 I check the blockchain ledger?"

3 A. And I'm sorry, I've lost track
4 of where we are with all of the page turning.

5 Q. No, that's okay. Are you with 15:11:47
6 me on Page --

7 A. I'm with you.

8 Q. -- the page ending on Page 176?

9 A. I am, yes, sir.

10 Q. Okay. 15:11:51

11 A. And I'm with you on the
12 paragraph, "You can check the ledger for
13 StockX NFT through Etherscan," et cetera, et
14 cetera, yes.

15 Q. Uh-huh. Did you see StockX 15:11:55
16 make those representations to consumers in
17 any of the pages that you did review in
18 forming your opinions?

19 MR. FLUHR: Objection.

20 A. I can't recall if I saw this 15:12:07
21 exact language. Certainly there were a
22 mixture of communications related to what is
23 on-chain, what is not on-chain, what can be
24 traced where, and what page to find various
25 information on. 15:12:26

1 So not -- not a black-and-white
2 answer, but I've seen similar narratives.

3 Q. (BY MR. FORD) Okay. Does any
4 of the -- does the fact of any of these
5 disclosures from StockX to customers change 15:12:38
6 any of the opinions that you reference in
7 your report to the extent you did not see
8 them or consider them prior to today?

9 A. So it doesn't change it.
10 And -- and let me explain my thinking here. 15:12:53

11 There were comments throughout
12 that were covering a variety of informational
13 purposes. Some of those more loudly
14 proclaiming blockchain functionality, some of
15 them in a more bespoke way responding to a 15:13:16
16 particular question or putting up a -- an
17 FAQ.

18 I think for me, weighing all of
19 those things relative to what actually
20 happened is the most important aspect of 15:13:31
21 that.

22 And so when I see the CEO talk
23 about a direct connection to the blockchain
24 one to one or the broader context of NFTs
25 being conveyed as sort of the colloquial NFT, 15:13:46

1 to believe that there's something here more
2 than the physical asset to be able to drive
3 the pricing in the way that it did.

4 And so the comments here are
5 really in support of some of the messages 15:31:12
6 that I encountered from consumers opining on,
7 what it is that we're paying the additional
8 funds for, for example, above and beyond the
9 price of a shoe.

10 Q. (BY MR. FORD) So is it your 15:31:24
11 opinion that the prices consumers were
12 willing to pay for Vault NFTs was driven by
13 those consumers' valuation of the, as you put
14 it, exclusive benefits that StockX was
15 offering? 15:31:43

16 MR. FLUHR: Objection.

17 A. My opinion is that consumers
18 believed they were getting a bundle of rights
19 and benefits in addition to vaulting and paid
20 a premium for those rights and benefits. 15:31:56

21 Q. (BY MR. FORD) And I -- I -- I
22 know I hate to keep harping on this, but it
23 is a point of some confusion for me, because
24 in your report you describe the vault service
25 and the trading service as distinct services. 15:32:09

1 And are you -- is it your
2 opinion that the trading service was part of
3 a bundle of rights and benefits for which
4 consumers were paying a premium in addition
5 to vaulting?

15:32:24

6 MR. FLUHR: Objection.

7 A. Yeah, so I'm sorry to create
8 any confusion related to this. I guess my
9 blind spot is when we talk about
10 transactions, I'm thinking about on-chain
11 transactions consumer-to-consumer,
12 peer-to-peer, who are purchasing physical
13 goods or assets. And so what happens in the
14 transaction arena at StockX, I -- I don't
15 know.

15:32:35

15:32:48

16 And so, therefore, at the risk
17 of not answering the question, my view isn't
18 that -- my view is void of whether or not
19 that transaction process that I'm sort of
20 blind to is -- is relevant.

15:33:05

21 What I'm really referring to is
22 the vault capability and the ability for a
23 consumer to trade that physical asset, or
24 sell that physical asset, without having to
25 physically go get that out of their --

15:33:20

1 wherever you keep shoes -- closet, bookshelf,
2 whatever, right, and ship it to the next
3 consumer.

4 Does that help?

5 Q. (BY MR. FORD) I think it does. 15:33:31

6 So if I understand your
7 testimony correctly, you believe that
8 consumers understood what they were buying
9 with a Vault NFT to include a vaulting and
10 storage service, a transaction service that 15:33:43
11 allowed the computer to -- consumer to trade
12 that physical asset without having to
13 physically store it themselves, and a third
14 category of additional exclusive benefits.

15 Is that fair? 15:34:00

16 A. Yes.

17 Q. Okay. What did you do to
18 determine what value consumers placed on each
19 of those three components of the Vault NFT
20 that they were buying? 15:34:15

21 MR. FLUHR: Objection.

22 A. So it -- you know, look,
23 they're paying a substantial premium,
24 sometimes thousands of percent above the
25 price of the physical shoe. 15:34:27

1 So on its face, there may be
2 some appreciable difference between the shoe
3 and purchasing that NFT because they're
4 saving some money through this vaulting
5 process.

15:34:42

6 It seems illogical that that's
7 hundreds or thousands of percents in
8 multiples, right?

9 And so based on the evidence
10 that I've seen, people didn't say, we are
11 buying this at a premium because I get to
12 vault my sneakers and I own these shoes.

15:34:55

13 It's my opinion that people saw
14 this as a distinct product that it had its
15 own digital asset in the form of an image and
16 all of these other rights and benefits that
17 would be part of that purchase if I'm a
18 consumer. And that's what they were paying
19 the difference for.

15:35:10

20 Q. (BY MR. FORD) Have you heard
21 of the term "conjoint analysis"?

15:35:23

22 A. I have not.

23 Q. Have you ever done any form of
24 survey or analysis intended to or designed to
25 understand how consumers value different

15:35:39

1 A. Yes. But, again, it's
2 potentially relevant to other arguments I
3 make and, therefore, part of other areas of
4 the report.

5 Q. Yeah. So just maybe if I can 16:05:36
6 try to isolate two concepts. One is the
7 analysis you did and its conclusions from
8 what flows from those conclusions.

9	Do -- do you understand that	
10	separation?	16:05:52

11	A. Yes.
----	---------

12 Q. Okay. The former category, am
13 I right that that's set out on Page 49, 50,
14 and the top of 51?

15	A. I believe that's right.	16:05:59
----	----------------------------	----------

16 Q. Okay. Let's start with what is
17 a comparative price analysis?

18 A. So as you read, it's really
19 about understanding what the Vault NFT price
20 was in comparison to the exact same shoe 16:06:16
21 without the NFT.

22 Q. I appreciate that that is
23 the -- the analysis you did.

24	I'm asking: Do you understand	
25	the term "comparative price analysis" to have	16:06:29

1 any more general meaning?

2 A. I -- I'm not an economist, so
3 if that's a term of art, I'm unaware.

4 Q. Okay.

5 A. Our simple task here, my 16:06:38
6 charter here was to better understand whether
7 or not the NFT version of the shoes were
8 trading at a different price than the
9 physical shoe itself.

10 Q. I see. So the hypothesis as it 16:06:49
11 were that you were testing was whether the
12 prices of the NFT versions of a particular
13 model of shoe was trading at a different
14 price than the physical shoe?

15 A. Right, or trading at the same 16:07:04
16 price.

17 Q. Or trading at the same price?

18 A. Of course.

19 Q. The same or different price. I
20 understand. 16:07:13

21 Before you -- well, let me take
22 a step back, actually.

23 You said that your task here
24 was to understand that.

25 Was that a specific assignment 16:07:27

1 A. -- performed an evaluation --

2 Q. Oh, yeah. Sorry.

3 A. -- things like that, but not
4 specific to whatever that term is that you're
5 using.

16:08:33

6 Q. I apologize. I'm using the
7 term as you use it in your report when you
8 say you performed a comparative price
9 analysis.

10 So using the term as you used
11 it in your report, have you previously
12 offered an expert opinion that included a
13 comparative price analysis?

16:08:40

14 A. So I've certainly compared
15 assets one to another. I've certainly
16 provided valuation relative to an asset based
17 on comparative analysis. Has that made any
18 testimony? I don't recall.

16:08:51

19 Q. So you don't recall previously
20 offering an expert opinion that included a
21 comparative price analysis like the one
22 you're offering in this case?

16:09:05

23 MR. FLUHR: Objection.

24 A. Yeah, I don't remember if it
25 was a component of any of the expert

16:09:14

1 opinions.

2 Q. (BY MR. FORD) Have you ever
3 written any publications -- and if you want
4 to refresh your recollection, in Exhibit B of
5 your publications -- that included a 16:09:27
6 comparative price analysis like the one you
7 offer in this case?

8 A. I don't believe so.

9 Q. Do you have any understanding
10 of what the term "price formation" means? 16:09:36

11 A. No.

12 Q. Starting on Page 49 of your
13 report, you write: "If no additional value
14 or perceived product or service were
15 associated with the Vault NFT beyond the 16:09:55
16 claimed the physical product, then one would
17 expect the Nike Vault NFTs to sell at similar
18 prices to the associated physical non-NFT
19 shoes."

20 Is that accurate? 16:10:06

21 A. Correct.

22 Q. And is that a correct statement
23 of the hypothesis you were testing in this
24 case with your comparative price analysis?

25 A. It was a curiosity to satisfy 16:10:16

1 What did you do to determine
2 whether or not Vault NFTs were trading at
3 different prices from the non-NFT versions of
4 the same shoes?

5 A. So you can see at the top of 16:11:34
6 Page 50 the result of that. So it is
7 literally a comparison of the exact same shoe
8 in its NFT form and the non-NFT form with the
9 price delta being the yellow bar on this
10 side. 16:11:54

11 Q. So just to make sure that I
12 understand correctly, we can look at the
13 leftmost set of three. The -- the box reads:
14 "Nike Dunk Low Off-White Lot 50 - US M 8.5."

15 And StockX offered some of 16:12:11
16 those shoes as an NFT on its marketplace and
17 the non-NFT version of those shoes was also
18 available on the StockX marketplace; is that
19 correct?

20 A. That's correct. 16:12:24

21 Q. And the number 7500 here, am I
22 correct that that represents the highest
23 completed transaction price for the NFT
24 version of that shoe from the time period
25 January 18, 2022, through February 2nd, 2022? 16:12:47

1 A. Yes.

2 Q. Do you have an understanding of
3 what those mean or refer to?

4 A. Generally speaking, yes. I'm
5 not sure the context at which you're asking 16:23:23
6 it.

7 Q. Sure. So what I'm trying to
8 understand is, on Page 50 when you say that
9 the highest sale price of a Nike Dunk Low
10 Off-White Lot 50 during the time period of 16:23:36
11 your analysis was \$7,500 --

12 A. Right.

13 Q. -- how many Vault NFTs were
14 sold for that price during the period in
15 question? 16:23:50

16 MR. FLUHR: Objection.

17 A. One.

18 Q. (BY MR. FORD) And is that true
19 for the other NFT prices shown on the chart
20 on Page 50? 16:24:07

21 A. I believe so.

22 Q. And what about for the non-NFT
23 prices, do those represent also one
24 transaction at that price?

25 A. I believe that's right. 16:24:17

1 Q. And so to the extent it's
2 useful to look at Page 13 --

3 A. Uh-huh.

4 Q. -- is it your understanding
5 that for a NFT or non-NFT version of a shoe 16:24:29
6 to sell on StockX's platform, one consumer
7 would have to put in a -- terms as they're
8 used -- an ask, and one person would have to
9 put in a bid at matching prices?

10 A. Okay. Yes. 16:24:56

11 Q. That is your understanding?

12 A. That is my understanding.

13 Q. Do you know how many -- how
14 many total transactions there were on StockX
15 for each of the NFT versions of the shoes you 16:25:25
16 set out here during the time period of your
17 analysis?

18 A. I do not.

19 Q. Do you know how many total
20 transactions there were on StockX for each of 16:25:39
21 the non-NFTs versions of the shoes you set
22 out here during the time period of your
23 analysis?

24 A. I do not.

25 Q. Do you know what the average 16:25:47

1 price of a Vault NFT for each of these shoes
2 was during the time period of your analysis?

3 A. Not without running those
4 numbers, no.

5 Q. Do you know the average price 16:26:00
6 of a non-NFT version of each of these shoes
7 on StockX's marketplace during the time
8 period of your analysis?

9 A. I do not.

10 Q. Am I correct that the yellow 16:26:09
11 bar essentially represents A minus B, where A
12 is the NFT price and B is the non-NFT
13 pricing?

14 A. It is a delta between the two,
15 correct. 16:26:26

16 Q. Other than doing the
17 subtraction necessary to get to that delta,
18 was there any other analysis you performed of
19 either the NFT or non-NFT prices that you set
20 out on Page 50? 16:26:42

21 MR. FLUHR: Objection.

22 A. I think that was the most
23 notable effort.

24 Q. (BY MR. FORD) Okay. And then
25 you calculated this at the end of the first 16:26:51

1 whether the NFT delta that you were observing
2 was the result of a perception among
3 consumers that the Vault NFTs were scarce and
4 exclusive?

5 MR. FLUHR: Objection. 16:37:36

6 A. Yeah. So, again, this is the
7 broader analysis of comparing behaviors and
8 patterns here to what exist in other
9 platforms, launches, and NFT projects.

10 It's true across all of those 16:37:48
11 that the more scarce an asset is, the more
12 valuable it becomes in the eyes of a
13 consumer.

14 And so by adding elements of
15 scarcity here, it's reasonable to believe 16:38:02
16 that that's exactly what consumers understood
17 that to mean.

18 Q. (BY MR. FORD) And in your
19 price analysis as you set it out on Pages 49
20 to 51, do you anywhere discuss the issue of 16:38:14
21 scarcity?

22 A. Not in that section, no.

23 Q. You mentioned just now and a
24 minute or two before that there was a broader
25 analysis of comparing behaviors and patterns 16:38:36